IT 95-56
Tax Type: INCOME TAX
Issue: 1005 Penalty (Reasonable Cause Issue)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

XXXXX	)	
Taxpayer	)	
	)	Docket No.
v.	)	FEIN:
	)	
THE DEPARTMENT OF REVENUE	)	Harve D. Tucker,
OF THE STATE OF ILLINOIS	)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter comes before the Office of Administrative Hearings pursuant to the Taxpayer's timely protest to the Notice of Denial dated September 30, 1994. At issue is whether the Taxpayer is liable for 35 ILCS 5/804 penalty for not making estimated tax payments and 35 ILCS 5/1005 penalty for late payment.

By letter dated November 23, 1994, the Taxpayer waived its right to a hearing and requested that the decision be based on the information in the file. Following a review of the file and all evidence therein, it is recommended that this matter be resolved in favor of the Department of Revenue.

FINDINGS OF FACT:

1. The Taxpayer had a federal net operating loss carryforward from tax years ending prior to 12/31/86 totalling $1,487,671 and an Illinois net loss deduction of $347,377.

2. The Taxpayer also had an asset sale on the last month of the subject fiscal year in which 14% of the company's assets were sold. The assets had a different basis for tax purposes than for book purposes. This sale produced an extraordinary gain of $6,278,685 or a 65% increase in

taxable income, before apportionment.

3. The Taxpayer filed its IL-1120 for tax year ending 6/30/93 and paid the tax on March 11, 1994. The Taxpayer completed the IL-2220, using the annualized income installment method, which was accepted by the Department.

4. For the prior tax year ending 6/30/92, the Taxpayer showed no tax liability.

CONCLUSIONS OF LAW: With regard to the 35 ILCS 5/804 penalty, effective for tax years ending on or after December 31, 1990, corporations are no longer excepted from the penalty if the preceding year's return showed no liability.1 In addition, it must be noted that the Taxpayer was still required to make estimated payments, even excluding the income realized from the extraordinary asset sale.2 Estimated payments are required if income and replacement tax exceed the total tax credited for the tax year by more than $400.

Since the referenced sale occurred in the last month of the fiscal year, the penalty was calculated by the Taxpayer using the Annualized Income Installment Method. This method was accepted by the Department.

With regard to the reasonable cause exception to the 35 ILCS 5/1005 penalty, it is noted that no tax payments were made from the due date of the return, September 15, 1993, until March 11, 1994. The Taxpayer argues that it could not imagine that taxable income would exceed net operating loss carryforwards, even with the substantial asset sale. Because of the complexity of the many assets sold, it took months to calculate the amount of the sale. This does not constitute reasonable cause. It is exactly those types of estimates which are required of the Taxpayer and its inability to make such estimates is not a defense. It is reiterated that even excluding the extraordinary asset sale, the Taxpayer was still required to pay tax.

It is, therefore, recommended that a final decision be issued consistent with the determinations memorialized above and that the Notice of Denial be sustained in its entirety.

Harve D. Tucker
Administrative Law Judge

Date

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1 P.A.86-678, effective September 1, 1989.
2 See EDA-25, Column C, attached.